

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1282 OF 1994

Shri. K.L. Mansukhani,
Indian Inhabitant, aged 54 years,
Occupation Business,
residing at 5-1 Good Earth Housing Society,
Road No.2, Sindhi Society, Chembur,
Bombay 400 071.

....Petitioner.

Vs.

1. Shri. Surendra Kumar,
Dy. Commissioner of Police, Zone IV,
Bombay.
2. Shri.K.E. Nath,
Sr. Inspector of Police,
Antop Hill Police Station,
Bombay.
3. Shri. Satish Sahney,
The Commissioner of Police,
Greater Bombay, Bombay.
4. The State of Maharashtra.

....Respondents.

Mr.S.V. Kotwal i/by Mr. S.R.Chitnis for the
Petitioner.

Ms. S.V.Gajare, APP. for the State.

**CORAM : R.S. MOHITE, J.
DATED : 20/7/2006.**

ORAL JUDGMENT

1. This is a petition seeking to quash L.A.C. No.1514
of 1994 pending in the court of Metropolitan Magistrate,

Kurla Court, Andheri, Bombay.

2. Two grounds were urged in this petition. The case was filed in the court after investigation in pursuance of a F.I.R. dated 6.10.1994 filed by the Police Inspector Mr. Vasant Puneekar. The F.I.R. was registered against the four persons for running an illegal video parlour. It was the case of the police that on the date of raid at the video parlour, the accused were found indulging in gaming by running certain video machines which were seized under panchanama.

3. The prosecution case was that there was violation of Section 4 and 5 of the Bombay Prevention of Gaming Act, 1887. The only point that was urged that there was nothing to indicate that the video machines that were seized or which were used at the time of raid could be used for the purpose of gaming as defined in Section 3 of the said Act.

4. Section 3 of the said Act defines "gaming". Gaming includes wagering or betting except wagering or betting upon a horse race etc. in certain conditions. It is argued that yet in the case of **Robert Elango J. Vs. Inspector of Police and anr.** reported in 2004 ALL MR (Cri.) 1040, this court has held that an activity would

not amount to gaming if it involves an element of skill. It was pointed out that this court further came to the conclusion that in such case the prosecution must bring material on record either in the F.I.R. or in the statements of witnesses who visited the video parlour and the description of game must be given so that its nature can be determined.

5. On perusal of the F.I.R., Panchanama and other statements, it is common ground in this case that the nature of the video games are not described. Similarly panchanama does not indicate as to what exactly the persons who were playing the game were doing. There being total absence of any description of the nature of the game, there is no material to indicate that the same was purely a game of chance. In the absence of such material in the present case, no purpose would be served in continuing with the trial which has been pending since 1994. In the result, rule is made absolute in terms of prayer clause (a)

6. Petition is disposed off.

(R. S. MOHITE, J.)

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ORAL JUDGMENT

(OPERATIVE ORDER)

. For the reasons recorded separately in the
judgment, this court passes the following order.

. In the result, rule is made absolute in terms of prayer clause (a).

. Petition is disposed off.

(R. S. MOHITE, J.)